

FILED

UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO SEP 29 2003

STEPHEN A. SANCHEZ,

Plaintiff,

v.

Civ. No. 03-0904 WPJ/RLP

COUNTY OF RIO ARRIBA, et al.,

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION<sup>1</sup>**

1. This proceeding was originally filed in New Mexico First Judicial District Court, *Sanchez v. County of Rio Arriba, et al.*, Cause No. D-0117CV00247. Defendants removed to this court based on Plaintiff's allegation that his cause of action arose under 42 U.S.C. § 1983. A review of Plaintiff's complaint, however, indicate that he has merely alleged negligence, which will not support a claim under § 1983. *Parratt v. Taylor*, 451 U.S. 527, 534 (1981); *see also Woodward v. City of Worland*, 977 F.2d 1392, 1399 n.11 (10th Cir. 1992) (allegations of gross negligence will not support a § 1983 claim).

2. The court may raise lack of subject matter jurisdiction at any time, with or without a motion from the parties. *Martin v. Franklin Capital Corp.*, 251 F.3d 1284, 1291 n.3 (10th Cir. 2001); *Four Aces Mobile Home Estates v. Lundahl*, 35 F.Supp.2d 1337,

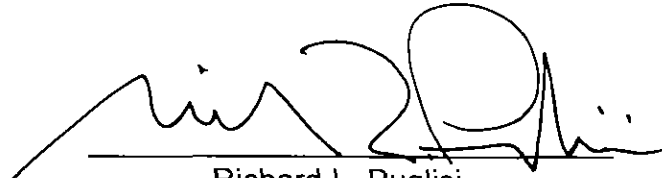
---

<sup>1</sup> Within ten (10) days after a party is served with a copy of the "Magistrate Judge's Proposed Findings and Recommended Disposition" (the "Proposed Findings") that party may, pursuant to 28 U.S.C. § 636 (b)(1), file written objections in the United States District Court to the Proposed Findings. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Proposed Findings. If no objections are filed, no appellate review will be allowed.

1340-41 (D. Utah 1998). This applies to removed cases and the lack of subject matter jurisdiction obligates this court to remand to the state court. *Id.*

RECOMMENDED DISPOSITION

I recommend that the case be dismissed for lack of subject matter jurisdiction and remanded to state court.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', written over a horizontal line.

Richard L. Puglisi  
United States Magistrate Judge